

CONTRACT #3
RFS # 359.62-035

**Department of Children's
Services**

VENDOR:
David W. Frensley, M.A.



STATE OF TENNESSEE

DEPARTMENT OF CHILDREN'S SERVICES

Phil Bredesen
Governor

Viola P. Miller
Commissioner

December 7, 2005

James White, Executive Director
Fiscal Review Committee
8th Floor, Rachel Jackson Building
320 Sixth Avenue North
Nashville, TN 37243

Director White:

Per request, this item of correspondence is forwarded to you to clarify the purpose and intent of Amendment #2 to Contract FA-04-15551-00. The contract is with Mr. David W. Frensley, M.A., who provides mental health evaluations and counseling services to male and female students housed at the Woodland Hills (WHYDC) and New Visions (NVYDC) Youth Development Center campus. The initial contract was awarded by competitive procurement in fiscal year 2004. At that time WHYDC was the sole location of service. Due to increased service demand, it was amended in fiscal year 2005. Amendment #1 added \$15,000.00 to that years annual liability which increased the total maximum liability to \$250,000.00. Toward the end of fiscal year 2005, construction was completed on a new building on the Woodland Hills campus designed to house the female student residents previously housed in the WHYDC facility. This new building was designated as a youth development facility with a separate Allotment Code and budget. Since the original contract only specified that services were to be provided at WHYDC, Amendment #2 was necessary to ensure that the contract also named the new YDC residence housing the female student residents as their location of service.

Amendment #2 only changes the location of service for the female residents to New Visions Youth Development Center. It does not change the intent of, or modify the nature of services provided, the student population being served, or the maximum liability in any way. However, without the amendment, NVYDC could not pay Mr. Frensley for services rendered at NVYDC.


Sincerely,


Viola P. Miller
Commissioner

VPM:SLB

7th Floor, Cordell Hull Building, 436 Sixth Avenue North, Nashville, Tennessee 37243-1290
Telephone No. (615)741-9699

CONTRACT SUMMARY SHEET

RFS Number: 359.62-035		Contract Number: FA0415551-02	
State Agency: Department of Children's Services		Division: Woodland Hills and New Visions YDC's	
Contractor		Contractor Identification Number	
David W. Frensley, M.A.		<input checked="" type="checkbox"/> V- 415924883 <input type="checkbox"/> C-	
Service Description			
Psychological/Education Diagnostic Evaluations for Woodland Hills & New Visions Youth Development Centers			
Contract Begin Date		Contract End Date	
August 1, 2003		June 30, 2008	
Allotment Code	Cost Center	Object Code	Fund
SUP	550	084	11
		<input checked="" type="checkbox"/> on STARS	
Grant	Grant Code	Subgrant Code	
FY	State Funds	Federal Funds	Interdepartmental Funds
2004	47,000.00		
2005	62,000.00		
2006	47,000.00		
2007	47,000.00		
2008	47,000.00		
Total:	250,000.00		
CFDA #		Check the box ONLY if the answer is YES:	
State Fiscal Contact		Is the Contractor a SUBRECIPIENT? (per OMB A-133)	
Name: Joe Cimino Address: 7 th Floor Cordell Hull Bldg. Phone: Nashville, TN 37243 615-741-8304		Is the Contractor a VENDOR? (per OMB A-133) X	
		Is the Fiscal Year Funding STRICTLY LIMITED? X	
Procuring Agency Budget Officer Approval Signature		Is the Contractor on STARS? X	
		Is the Contractor's FORM W-9 ATTACHED?	
		Is the Contractors Form W-9 Filed with Accounts? X	
COMPLETE FOR ALL AMENDMENTS (only)		Funding Certification	
	Base Contract & Prior Amendments	This Amendment ONLY	
END DATE →	06/30/08	06/30/08	
FY: 2004	47,000.00		
FY: 2005	47,000.00	15,000.00	
FY: 2006	47,000.00		
FY: 2007	47,000.00		
FY: 2008	47,000.00		
Total:	235,000.00	15,000.00	

DEC - 1 2005

DIRECTOR OF ACCOUNTS

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 COMMUNICATIONS OFFICE
 OFFICE OF
 MANAGEMENT SERVICES

C O N T R A C T S U M M A R Y S H E E T S U P P L E M E N T

Contract Number	FA0415551-02						
Fiscal Year	2008						
Allotment Code	Cost Center	Object Code	Fund	Grant Code	Subgrant Code	CFDA #	Amount
359.62	550	084	11	<input checked="" type="checkbox"/> on STARS			39,200.00
359.64	550	084	11	<input checked="" type="checkbox"/> on STARS			7,800.00
TOTAL							47,000.00

CONTRACT SUMMARY SHEET SUPPLEMENT

Contract Number		FA0415551-02					
Fiscal Year		2007					
Allotment Code	Cost Center	Object Code	Fund	Grant Code	Subgrant Code	CFDA #	Amount
359.62	550	084	11	<input checked="" type="checkbox"/> on STARS			39,200.00
359.64	550	084	11	<input checked="" type="checkbox"/> on STARS			7,800.00
TOTAL							47,000.00

CONTRACT SUMMARY SHEET SUPPLEMENT							
Contract Number		FA0415551-02					
Fiscal Year		2006					
Allotment Code	Cost Center	Object Code	Fund	Grant Code	Subgrant Code	CFDA #	Amount
359.62	550	084	11	<input checked="" type="checkbox"/> on STARS			39,200.00
359.64	550	084	11	<input checked="" type="checkbox"/> on STARS			7,800.00
TOTAL							47,000.00

FA0415551-02

2006

Amount

39,200.00

7,800.00

47,000.00

[illegible]

[illegible]

**AMENDMENT TWO
TO CONTRACT FA-04-15551-02
BETWEEN
DEPARTMENT OF CHILDREN'S SERVICES
AND
DAVID W. FRENSLEY, M.A.**

This Contract, by and between the State of Tennessee, Department of Children's Services (DCS), hereinafter referred to as the State, and David W. Frensley, hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Section A.1. in its entirety and insert the following in its place:
 - A.1. The contractor agrees to perform the following services, as requested by DCS, to the two following gender separate facilities; New Visions Youth Development Center with a capacity of twenty-four (24) resident female students, and Woodland Hills Youth Development Center with a capacity of one hundred twenty (120) resident male students.

The other terms and conditions of this Contract not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

DAVID W. FRENSLEY, M.A.:

David W. Frensley
David W. Frensley, M.A.

9/27/05
Date

DEPARTMENT OF CHILDREN'S SERVICES:

Viola P. Miller
Viola P. Miller, Commissioner

9/30/05
Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr.
M. D. Goetz, Jr., Commissioner

10/12/05
Date

DEPARTMENT OF PERSONNEL:

Randy C. Camp
Randy C. Camp, Commissioner

OCT 14 2005
Date

COMPTROLLER OF THE TREASURY:

John G. Morgan
John G. Morgan, Comptroller of the Treasury

11/14/05
Date

CONTRACT SUMMARY SHEET

RFS Number:	359.62-035		Contract Number:	FA-04-15551 - 01	
State Agency:	Department of Children's Services		Division:	Woodland Hills Youth Development Center	
Contractor			Contractor Identification Number		
David W. Frensley, M.A.			<input checked="" type="checkbox"/> V- <input type="checkbox"/> C-	415924883	
Service Description:					
Psychological/Education Diagnostic Evaluations For WHYDC Students					
Contract Begin Date:			Contract End Date:		
August 1, 2003			June 30, 2008		
Allotment Code	Cost Center	Object Code	Fund	Grant	Grant Code
359.62	550	084	11	<input checked="" type="checkbox"/> on STARS	
FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount (including ALL amendments)
2004	\$47,000.00				\$47,000.00
2005	\$62,000.00				\$62,000.00
2006	\$47,000.00				\$47,000.00
2007	\$47,000.00				\$47,000.00
2008	\$47,000.00				\$47,000.00
	\$250,000.00				\$250,000.00
CFDA #			Check the box ONLY if the answer is YES:		
State Fiscal Contact			Is the Contractor a SUBRECIPIENT? (per OMB A-133)		
Name:	Paul Vander Meer <i>Joseph R. Ramirez</i>		Is the Contractor a VENDOR? (per OMB A-133)		
Address:	7 th Floor Cordell Hull Building		Is the Fiscal Year Funding STRICTLY LIMITED?		
Phone:	615-741-8304		Is the Contractor on STARS?		
Procuring Agency Budget Officer Approval Signature			Is the Contractor's FORM W-9 ATTACHED?		
<i>Joseph Ramirez 4/14/05</i>			Is the Contractor's Form W-9 Filed with Accounts?		
			x		
COMPLETE FOR ALL AMENDMENTS (only)			Funding Certification		
	Base Contract & Prior Amendments	This Amendment ONLY	Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred. <i>M. D. Goetz Jr./KS</i>		
END DATE →	06/30/08	06/30/08			
FY: 2004	47,000.00				
FY: 2005	47,000.00	15,000.00			
FY: 2006	47,000.00				
FY: 2007	47,000.00				
FY: 2008	47,000.00				
Total:	235,000.00	15,000.00			

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Office of Contracts Review

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MAY 23 2005

DCS

**AMENDMENT ONE
TO CONTRACT FA-04-15551
BETWEEN
DEPARTMENT OF CHILDREN'S SERVICES
AND
DAVID W. FRENSLEY, M.A.**

This Contract, by and between the State of Tennessee, Department of Children's Services, hereinafter referred to as the State, and David W. Frensley, hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Section C.1. Maximum Liability in its entirety and insert the following in its place:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Two Hundred Fifty Thousand Dollars (\$250,000.00). The maximum liability for Fiscal Years 2004, 2006, 2007, and 2008 shall not exceed Forty Seven Thousand Dollars (\$47,000.00). The maximum liability for Fiscal Year 2005 shall not exceed Sixty Two Thousand Dollars (\$62,000.00). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

The other terms and conditions of this Contract not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

DAVID W. FRENSLEY, M.A.:

David W. Frensley
David W. Frensley, M.A.

6/9/05
Date

DEPARTMENT OF CHILDREN'S SERVICES:

Viola P. Miller / VPM
Viola P. Miller, Commissioner

6-13-05
Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

DEPARTMENT OF PERSONNEL:

Randy C. Camp, Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date



STATE OF TENNESSEE
DEPARTMENT OF CHILDREN'S SERVICES
7th Floor Cordell Building
436 Sixth Avenue South
Nashville, Tennessee 37243-1290

MEMORANDUM:

DATE: July 22, 2003
TO: M.D. Goetz, Jr., Commissioner
FROM: Michael J. Miller, Commissioner
SUBJECT: Procurement Request

Michael J. Miller /ms

The Department of Children's Services (DCS) recently did an RFP (#359.62-015) to procure Mental Health Evaluation and Counseling Services for students residing at Woodland Hill Youth Development Center. DCS received two proposals in response to the RFP and Jesse Jones; Ph.D. was the best-evaluated proposer and was awarded a contract (FA-04-15315-00) that began July 1, 2003. On July 21, 2003 Dr. Jones informed DCS that he is not able to fulfill the obligations of this contract (FA-04-15315-00) and is requesting the contract be terminated. DCS is requesting permission to **terminate** this contract (FA-04-15315-00) for cause with Jesse Jones; Ph.D. effective July 22, 2003. DCS is also requesting permission to award the contract to David Frensley, M.A. who was the next best-evaluated proposer to RFP (#359.62-015).


DCS is in **immediate need** of these mental health services because we have students at Woodland Hills Youth Development Center who are presently waiting and in need of mental health evaluations. DCS is in violation of DCS policy by not providing these evaluations.

David Frensley, M.A. is qualified and willing to provide the needed services and presently provides contract psychological services for DCS in the Davidson County Region and the Mid Cumberland Community Services Agency. Mr. Frensley has functioned as an independent practitioner and contractor for eleven (11) years. Mr. Frensley currently provides all services required in contracts, but has at his disposal two senior psychological examiners and a clinical psychologist who can provide services. Mr. Frensley's Address is:

David Frensley, M.A.
121 Hermitage Woods Drive
Hermitage, TN 37076

Your approval of this request is appreciated.

C O N T R A C T S U M M A R Y S H E E T

RFS Number: 359.62-007		Contract Number:	
State Agency: Department of Children's Services		Division: Woodland Hills Youth Development Center	
Contractor:		Contractor Identification Number:	
David W. Frensley, M.A.		<input checked="" type="checkbox"/> V- 415924883 <input type="checkbox"/> C-	
Service Description:			
Psychological/Education Diagnostic Evaluations For WHYDC Students			
Contract Begin Date:		Contract End Date:	
August 1, 2003		June 30, 2008	
Allotment Code:	Cost Center:	Object Code:	Fund:
359.62	550	084	11
		<input checked="" type="checkbox"/> on STARS	
Grant:	Grant Code:	Subgrant Code:	
FY:	State Funds	Federal Funds	Total Contract Amount (including ALL amendments)
2004	\$47,000.00		\$47,000.00
2005	\$47,000.00		\$47,000.00
2006	\$47,000.00		\$47,000.00
2007	\$47,000.00		\$47,000.00
2008	\$47,000.00		\$47,000.00
	\$235,000.00		\$235,000.00
CFDA #		Check the box ONLY if the answer is YES:	
State Fiscal Contact		Is the Contractor a SUBRECIPIENT? (per OMB A-133)	
Name: Paul Vander Meer		Is the Contractor a VENDOR? (per OMB A-133) x	
Address: 7 th Floor Cordell Hull Building		Is the Fiscal Year Funding STRICTLY LIMITED? x	
Phone: 615-741-8304		Is the Contractor on STARS? x	
Procuring Agency Budget Officer Approval Signature		Is the Contractor's FORM W-9 ATTACHED?	
 7/25/03		Is the Contractor's Form W-9 Filed with Accounts? x	
COMPLETE FOR ALL AMENDMENTS (only):		Funding Certification	
	Base Contract & Prior Amendments	Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.	
END DATE →	This Amendment ONLY		
FY:			
FY:			
FY:			
FY:			
FY:			
Total:			

CONTRACT SUMMARY SHEET SUPPLEMENT

Contract Number	
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Fiscal Year	2004
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[illegible]

[illegible]

CONTRACT SUMMARY SHEET SUPPLEMENT

Contract Number _____

Fiscal Year	2006
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[illegible]

CONTRACT SUMMARY SHEET SUPPLEMENT

Contract Number	
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Fiscal Year	2007
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Fiscal Year	2007
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[illegible]

C O N T R A C T S U M M A R Y S H E E T S U P P L E M E N T							
Contract Number							
Fiscal Year	2008						
Allotment Code	Cost Center	Object Code	Fund	Grant Code	Subgrant Code	CFDA #	Amount
359.62	550	084	11				\$47,000.00
TOTAL							\$47,000.00

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF CHILDREN'S SERVICES
WOODLAND HILLS YOUTH DEVELOPMENT CENTER
AND
DAVID W. FRENSLEY, M.A.**

This Contract, by and between the State of Tennessee, Department of Children's Services (DCS), Woodland Hills Youth Development Center, hereinafter referred to as the "State" and David W. Frensley, M.A., hereinafter referred to as the "Contractor," is for the provision of Mental Health Evaluation and Counseling Services, as further defined in the "SCOPE OF SERVICES."

The Contractor is an individual. The Contractor's address is:

121 Hermitage Woods Drive
Hermitage, Tennessee 37076

The Contractor's place of incorporation or organization is Tennessee.

A. SCOPE OF SERVICES:

A.1 The Contractor shall perform the following services upon request from the Department of Children's Services (DCS) staff, for students located at Woodland Hills Youth Development Center:

A.1.a. The Contractor shall provide Psychological/Educational Diagnostic screenings with the educational component along with treatment recommendations. The screenings may be a single part or parts of a comprehensive evaluation or a short form of an instrument. These screenings shall include but are not limited to:

1. Assessment of personality, behavior or emotional status.
2. Assessment of intellectual or cognitive potential in verbal and nonverbal areas.
3. Assessment of academic strengths or weaknesses.
4. Assessment of levels of functioning in various cognitive and affective modes related to learning.
5. Assessment of alcohol and drug abuse.
6. Assessment of sexual abuse and/or sexual perpetration. Comply with training as required by the contracted sex offender treatment program developers.
7. Psychosexual assessment when indicated.
8. Assessment of adolescent depression, suicide and self-harm issues.
9. Complete five axis Diagnostic Statistical Manual (DSM) diagnosis to eliminate "rule outs". Diagnosis of mental retardation using measure of IQ and Adaptive Behavior.

- A.1.b. The following shall accompany evaluations where appropriate:
1. Certification of educational handicap
 2. A completed and signed integrated assessment form
 3. Certification of needs for mental health transfer, as needed
- A.2. The Contractor shall provide comprehensive psychological evaluations if screenings indicate psychological or educational difficulties.
- A.3. The Contractor shall provide enhanced psychosexual evaluation if psychosexual evaluation screening indicates a more enhanced evaluation is necessary.
- A.4. The Contractor shall provide Therapeutic Counseling (Crisis Intervention)
1. Provide therapeutic counseling to classification students as needed.
 2. Provide clinical notes with treatment recommendations.
- A.5. The Contractor shall provide Mental Health Case Consultation including Crisis Management Classification/Program Consultation.
- A.5.a. The Contractor shall provide Case Consultation for the purpose of assisting DCS staff in providing mental health services to a particular student or class of students.
- A.5.b. The Contractor shall provide Classification/Program Consultation for the purpose of assisting DCS staff in planning and developing programs.
- A.6. The Contractor shall provide an interim report to DCS staff on day of evaluation and a completed report must be submitted within five working days of the evaluation.
- A.7. Services shall be provided by a psychologist or a senior psychological examiner licensed by the State of Tennessee.
- A.8. The Contractor shall provide all supplies.
- A.9. The Contractor shall comply with all applicable policies and procedures found in the Department of Children's Services Policy and Procedures Manual.
- A.10. The Contractor shall perform, manage and complete all services at the Woodland Hills Youth Development Center.
- A.11. DCS staff administers preliminary screenings that are shared with the Contractor. The Contractor shall provide training and clinical supervision to ensure DCS staff administers these screenings appropriately.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on August 1, 2003 and ending on June 30, 2008. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Two Hundred Thirty Five Thousand Dollars (\$235,000.00). The maximum liability for each fiscal year shall not exceed Forty Seven Thousand Dollars

(\$47,000). The Payment Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Payment Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Payment Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The Payment Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the Payment Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor shall be compensated based upon the following Payment Rates:

<u>SERVICE DESCRIPTION</u>	<u>PAYMENT RATE</u>
<u>Screening Assessments</u>	
Personality, Behavior, Emotional	\$90 per assessment
Intelligence Functioning	\$75 per assessment
Academic Strengths/Weaknesses	\$75 per assessment
Functional Capabilities	\$50 per assessment
Alcohol and Drug	\$25 per assessment
Sex Abuse/Sexual Perpetrator, Adolescent	\$50 per assessment
Psychosexual Assessment	\$395 per assessment
Depression/Suicide Assessment	\$50 per assessment
DSM Diagnosis	\$25 per assessment
<u>Evaluations</u>	
Comprehensive Evaluations	\$295 per evaluation
Enhanced Psychosexual Evaluation	\$495 per evaluation
Therapeutic Counseling/Crisis Intervention	\$60 per hour
Consultation	\$60 per hour
Training	\$60 per hour

The Contractor shall not be compensated for travel time to the primary location of service provision.

The Contractor shall submit monthly invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices must, at a minimum, include the following:

- a. Name and position of each professional providing services
- b. Number of comprehensive evaluations or screening evaluations completed and the name of the individuals evaluated
- c. Number of hours spent providing case and/or program consultation and the name of the staff member receiving the services.
- d. Number of hours spent providing staff training and the name(s) of the staff receiving the services
- e. The applicable payment rate
- f. The total amount due the Contractor for the period invoiced.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.

C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least Ninety (90) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

David McFarlin, CSM Administration
Department of Children's Services
Woodland Hills Youth Development Center
3965 Stewarts Lane, Nashville, TN 37243
Telephone: 615-532-2003

The Contractor:

David W. Frensley, M.A.
Licensed Senior Psychological Examiner
121 Hermitage Woods Drive
Hermitage, TN 37076
Telephone: 615-736-4774

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.

E.5. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Proposal
- c. The Request for Proposal and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.6. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

E.7. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

E.8. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the

information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.9. HIPAA Compliance. Contractor warrants to the State that it is familiar with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract. Contractor warrants that it will cooperate with the State in the course of performance of the contract so that both parties will be in compliance with HIPAA, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to business associate agreements.
- E.10. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.11. Date/Time Hold Harmless. As required by *Tennessee Code Annotated*, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.
- E.12. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

- E.13. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in ***Tennessee Code Annotated***, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.
- E.14. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

IN WITNESS WHEREOF:

David W. Frensley, M.A.:

David W. Frensley, M.A. DAVID W. FRENSLEY 7/26/03
Signature and Title (Print Name) Date

DEPARTMENT OF CHILDREN'S SERVICES:

Michael J. Miller 7-29-03
Michael J. Miller, Commissioner Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M.D. Goetz, Jr., Commissioner Date

DEPARTMENT OF PERSONNEL:

Randy C. Camp, Commissioner Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury Date